

Section 6.2

County Recourse for Hearing Officer's Decision

Question posed at the Roundtable	<p>This document provides guidance on the following question posed at the Hearing Officer Roundtable:</p> <ul style="list-style-type: none">• Does the county agricultural commissioner (CAC) have any recourse if he/she disagrees with the Hearing Officer's proposed decision?
Proposed decision is based upon the facts presented at the hearing.	<p>No. The CAC must accept the facts as determined by the Hearing Officer and adopt the Hearing Officer's proposed decision based on those facts. The record of the administrative hearing is the single source of facts in the case.</p>
Due process rights and ex parte communication	<p>If the CAC were allowed to take action relying on information obtained outside the hearing record, the due process rights of the Respondent would be violated. The Respondent would be denied his/her right to confront any person providing such additional information or to refute or challenge the credibility of any additional evidence that might become known to the CAC outside his/her presence in the hearing. To allow the CAC to obtain and rely on facts outside the hearing process, and to change or modify the Hearing Officer's decision as result, would be the same as conducting a hearing on the violation of the Respondent for the second time in an ex parte manner in direct violation of his/her due process rights.</p>
What the CAC can do if the matter is appealed to the Director	<p>If the Respondent appeals the Commissioner's Decision to the Director, the CAC can submit written arguments explaining why he/she believes the Commissioner's Decision should be reversed or modified in whole or in part.</p>
There are two other ways to deal with the matter	<p>The CAC has choices when designating a Hearing Officer. If a CAC is disappointed in any aspect of a particular Hearing Officer's decisions, he/she could designate someone else to hear other <u>future</u> cases. The CAC can also hear the case himself or herself if he/she is able.</p>
